JF493
U6 A5
1908

State Referendum League of Maine

Memorial ... Concerning Initiative and Referendum

60TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 521.

MEMORIAL OF STATE REFERENDUM LEAGUE OF MAINE, CONCERNING INITIATIVE AND REFERENDUM.

Mr. OWEN presented the following

MEMORIAL CONCERNING THE INITIATIVE AND REFERENDUM, SUBMITTED BY THE STATE REFERENDUM LEAGUE OF MAINE.

MAY 26, 1908.—Ordered to be printed.

MEMORIAL TO CONGRESS CONCERNING THE INITIATIVE AND REFERENDUM.

MAY 25, 1908.

To the Senate and House of Representatives in Congress assembled:

At the request of the senior Senator from Maine (Mr. Hale) your honorable body has printed as a public document the speech of Hon. H. C. Lodge before the Central Labor Union of Boston, in which he opposes the establishment of a State-wide system whereby the voters shall possess an option to ballot directly on public questions, the will of the majority to be an instruction to their representatives. The undersigned, the State Referendum League of Maine, memorializes you to receive and publish the following argument for the other side. The Maine legislature has submitted to the people a constitutional amendment for the initiative and referendum to be voted upon this fall, and it is only fair that you accord equal rights to both sides.

Respectfully submitted.

STATE REFERENDUM LEAGUE OF MAINE,
By KINGSBURY B. PIPER, *Secretary.*

THE INITIATIVE AND REFERENDUM IN MAINE.

To advocate the adoption of direct legislation it is not necessary for one to assail American institutions or to declare that a departure has been made from the intentions and purposes of the fathers.

The Stars and Stripes float over the land of the free and the home of the brave just as truly to-day as when the poet expressed that sentiment so beautifully while detained on board a hostile fleet. Everything that has been said in laudation of our institutions, in appreciation of our national growth, in praise of the numerous brave deeds of our heroes is all true.

The experiment of founding a republic in the New World was beset with dangers from within and without. The men of those times were

8-25467

wise, patriotic, but prudent, and they sought to adhere to conservatism rather than to go to a dangerous extreme in the task before them. Even though they looked forward with optimism, yet they could not even imagine what the structure they had reared would, a hundred years later, become. Then there were only about three millions of people scattered along the Atlantic seaboard without a dream of monopolistic control of foodstuffs and without means of travel or communication to and from other localities, except by the most primitive methods. The provisions made at the time of building the foundations of this governmental structure were amply sufficient for the times. As time has gone on to more than the century mark, changes have come and we, as a people, have become numerous and great in power. Changes for the public good have been many and there have been many alterations in the structure of an extremely doubtful nature. The granting of franchises for the use and aggrandizement of corporations, the greedy and lawless manner in which the public domain has been obtained, the immoral and secretive, but effective, influence to secure unjust legislation are a few of the larger evils which are attracting the attention of a free people, and the effort of the times is in the direction of an eradication of these serious defects in the body politic. The purpose of the initiative and referendum is to afford a means by which the power to supervise legislation directly may be forcefully placed in the hands of the people.

At the next State election in September the voters of Maine will determine whether the power to initiate statute laws by petition shall be put into their hands; they will also decide whether they shall have the right to pass upon such legislation, enacted by the legislature, as they may indicate by petition. This proposed amendment to the State constitution is not revolutionary but is reformatory, and the strongest term that can justly be applied to it is the term, innovation.

The right of the people to petition has never been doubted, much less denied.

The feature of petitions, then, is not even an innovation. Any man or body of men may now petition for the passage of any law or number of laws which they may desire. That feature of the referendum which calls for the reference of legislation to the people is not an innovation, for the legislature has so referred matters in the past. The restriction and regulation of petitioners to actual voters, although somewhat different from past practices, must be regarded as in the interests of good government.

What are the innovation features of the initiative and referendum as proposed?

Under the present system of lawmaking the people can have only such legislation as their chosen representatives enact. The electors may object to consummated legislation, but when once upon the statute books laws are in full effect and must continue in effect until repealed by the same powers or similar powers as enacted such objectionable statutes. Under the referendum all statute legislation would be in abeyance for ninety days after the legislature has adjourned (emergency bills excepted), during which time the objectors would have an opportunity to secure, at their own expense, the signatures of not less than 10,000 voters upon petitions for the objected legislation to go to the people for a ballot. If the necessary number of signatures should be obtained then such reference to the voters

NOV 2 1908
Dept of Doc.

must be made and the fate of the submitted measures be decided according to the majority vote expressed by the ballot. Under the initiative, whenever 10,000 voters petition for the passage of a law, the bill and the petitions go to the legislature, where they must be considered, and if such initiated bills are not passed they must be referred to the people for action at the polls. The innovation then of the initiative and referendum is this, the final power to pass upon statute legislation will be lodged with the people instead of with the legislature, as at present.

Is the initiative and referendum needed?

If our State legislatures enact only beneficial laws and reject only unwise measures, our present system is perfect and there is no call for anything in the shape of reformatory innovations. If, on the other hand, some of the legislation enacted is unwise or some of the defeated legislation is needed, then there certainly is need of something remedial. If, furthermore, the action of our State legislature is in doubt as to its measure of justice, then there should be some means provided by which the doubt can be cleared away.

What is our present system of lawmaking?

Bills are introduced and at once referred to the proper committees. Public hearings are assigned and advertised, the measures being described only by titles. Not much information can be obtained from the title of a bill. On account of the mass of legislation introduced, it is impossible for the public press to enter into details except as to the most important measures. It is a physical impossibility for even members of the legislature to read, to say nothing of understanding, the torrent of public and private bills and resolves which pour into the house and senate and, at that, each member is provided with a printed copy of each measure. How, then, can our citizens at their homes become informed upon the proposed laws in which all should be interested? If, by chance, private citizens do learn of dangerous proposed legislation, they have the blessed and expensive opportunity to spend their own time and money in a trip to the statehouse to appear before the committee at the advertised hour and present an argument against the law's passage or to hire a lawyer to appear for them. Representatives are busy much of the time in their respective committee rooms listening to those interested in the legislation under consideration, and there is where the lawyers get in their work again and the proponent has generally secured the pleading of one or more of the most talented of the army of which professional gentlemen, who stick closely to the statehouse and work for the best paying clients during legislative terms.

In the face of these odds the members of the committees make up their reports, and our chosen representatives are only men of average ability. They are to report "ought to pass," "ought not to pass," "ought to pass in new draft," or "referred to the next legislature." Many influences are brought to bear upon them in and out of the committee rooms. They are called bully good fellows, are given to understand men of influence in politics and of prominence in party have decided views, and that action in compliance with those views will be appreciated in the future. They are promised support upon legislation which they may or may not desire if in return they will reciprocate. The committee room is well known as the legislative burial ground. The strangling operation is often practiced and the innocents

are frequently interred with scant ceremony in company with legislative monstrosities. As a general rule the committee reports are adopted and the favored measures are advanced to their several readings and to enactment. It is true that there are exceptions and that committee reports are rejected, but the exceptions are few. It is true that committees are sometimes divided in their reports, and then such matters are thrashed out in argument and settled by an actual vote. It is true that a few matters like an appropriation bill for the support of the State university, the removal of the State capital, resubmission, or the repeal of the Sturgis law will afford sufficient agitation as to overthrow all other matters and bring out so much venom and sectional bitterness as to defeat much worthy proposed legislation. Trading and dickering is a common pastime among legislators, chosen to represent the people and to advocate only those measures which are for the public good. The man who will not trade and dicker becomes a marked individual, and he may rest assured that measures bearing his authorship will receive prompt and effective execution by lobbyists and legislators as well. Practices which are worse than simply trading and dickering support upon legislation have often taken place, practices by which poor men, charged with the sacred responsibility of a representative, have been made rich and yet escaped punishment.

Committee reports usually come into the house or senate in batches and toward the last of the term. These reports are read very rapidly, acted upon with the same rapidity, and, with very rare exceptions, those measures the bearing death mark, "ought not to pass," sink into oblivion. Sometimes a member whose courage is good attempts to substitute the bill for the adverse report and fights the action of the committee on the floor. Very rarely does he succeed in advancing his cause so far as to hear it declared to be finally enacted. Favorable committee reports are ratified with few exceptions. The exceptions, however, are so vigorously debated that public attention is attracted to them to that extent that the public mind becomes impressed that representative government as it exists is a very efficient arrangement. Measures passed by the legislature go to the governor, who is given the power to veto. This power, in Maine, is so seldom exercised that it stamps the chief executive as being more of a dependent subordinate than an actual superior power. Actually, however, the infrequency of the governor's veto is a proof that he is always a part of the machine which dominates legislation, but it must be borne in mind that the governor is apparently identified only with those laws which go up to him. The defeated laws, whose short epitaphs are inscribed by a few men in the committee room or even in the full house and senate, never get into the executive office. The governor, on the face of the returns, has nothing whatever to do with the defeat of bills and resolves which are killed in the committee room or on the floor of the house or senate. Since the power of veto is rarely used by the governor against enacted legislation, the situation is reduced to about the figure naught, as far as reckoning the power of veto as an asset of representative government is concerned.

What is the source of legislation?

All legislation originates from the people. Every resolution and bill introduced has behind it some power which should be no greater than is merited on the grounds that the proposed legislation is beneficial and for the common good. Every vote gained for a measure

should be won for the reason that the measure itself possesses virtue. Every vote registered against a proposed law should have behind it the logical reason that the legislation is either vicious or unwise. The individual force behind every bill or resolve is the power working for its passage, and he rallies to his aid as much assistance as he can get, either by direct contact or through the agency of others. If a measure is in the interests of a corporation, its success is looked after by highly efficient attorneys, who know all the devious ways of accomplishing their purpose in the lobby and in the committee rooms. Political influences are invoked, political rewards are promised, and political threats are made, as the case may require. The individual force which asks for legislation for the only reason that it is meritorious, under the present system of lawmaking stands a very unequal show, whereas, according to the theory of the forefathers, the individual force of merit should be the predominating beauty of our representative government. That man who dreams that merit is the chief thing necessary to accomplish needed legislation is sure to suffer an awakening if he ever becomes involved in the legislative mill when the machinery is controlled by the modern political representative system. His wounds will be many and painful. He will suffer defeat unless he adapts himself to the ordinary trading method, which is the force of all forces, and which has reduced the individual merit of proposed legislation to the vanishing point. Meritorious proposed legislation defeated in committee, in the lobby, or on the floor of the House or Senate can not be resurrected under the representative plan as it now exists. Bad legislation which is traded through to the governor's chair, pushed along by the lobby and by support coerced by political threats, the people must take and abide by. Under what we term representative government, as at present constituted, there is no appeal. Needed legislation, then, is often defeated, and unwise legislation is often accomplished. Something in the line of a remedy is needed.

The initiative and referendum is the remedy.

This innovation will give to the people the power to finally decide all statute legislation on an appeal from the action of the legislature and the governor's approval, but upon certain restricted conditions to give force and effect to the right of petition.

Are the people competent to so finally decide statute legislation? The people, acting after calm deliberation, have never made a mistake, and they have been called upon to settle the momentous questions which have made the world's history. The people of Maine are intelligent, and if any apathy exists upon matters of legislation, such apathy is the result of their helplessness under the present lobbied and boss-ridden condition of what is curiously dubbed a representative system of government. Clearer and clearer has it become evident that there is no way to appeal from the action of the legislature, to which the electors still hold title, but the ownership, control, and possession of which are lodged somewhere else.

Under the initiative and referendum, who will take the trouble and bear the expense of securing the necessary 10,000 or 12,000 petitions?

The force which stands behind defeated meritorious measures will look after the initiative petitions. The force which stands in opposition to unwise but accomplished legislation will look after the petitions for a referendum. Under the initiative and referendum the individual force which has, as a support, the argument of merit, becomes a

master in legislation instead of being compelled to sacrifice merit and accept dicker and graft to reach a desired end.

The petitions secured, will the people vote upon measures?

Not all the people will vote upon measures, but the best people will exercise the right. The element sometimes referred to as "the mob" is at the polls for the purpose of gain, and its patriotism is purely political, enhanced by a close canvass for an election to office by political candidates. "The mob" does not study measures and does not vote upon them, but is always enthusiastic as to which candidate shall be the next sheriff. As a part of the machinery to make the initiative and referendum simplified and effective, every measure going to the people will be printed, together with the others, in pamphlet form, and a copy of such pamphlet will be placed in the hands of every voter. This literature will be an educative force; for, besides the referred measures, the pamphlet will contain arguments for and against each submitted measure. This will place before each voter not only the measures referred to him, but a discussion of those measures for him to weigh and consider before casting his vote. Is it not apparent that such an innovation will exert a far-reaching moral influence and decrease the apathy existing at the present time under the present system?

Who demands the initiative and referendum?

Those who understand the evils of the representative system as it is now arranged and desire to abolish those evils without abolishing the system itself. All power is inherent in the people. Upon this declaration has been built every State constitution in the Union. To give to the people the final power to decide legislation, the source of which is the people, is no departure from the first principle of popular government; but to bring about such an innovation in so simple a manner is to return to the belief of those who said to the world, "To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Will the people decide measures wisely?

From an individual view point, the answer to that question depends largely upon whether the person interrogated finds himself voting with the majority. Most Democrats believe that an election has been decided unwisely when Republican candidates are elected to office. Democrats, however, believe that the will of the majority should prevail. Those voters in the minority upon measures might believe the majority to be in the wrong, and later events might confirm the truth of such a contention. If, however, the people should make a mistake under the initiative and referendum, they would have the power to correct it. The mistakes made under our present system are out of reach of the people. Even the oft-repeated theory of defeating an erring representative falls flat in practice. Nearly all members of the house of representatives are chosen from classes of towns which nominate by rotation. Only a small number of the members of the lower house, for this reason, are ever renominated, and if not renominated there is no opportunity to make an effort to punish by defeating recalcitrant members at the polls.

What will be the effect of the initiative and referendum upon proposed legislation?

One effect will be to reduce the volume of proposed legislation and to improve its quality. The people are now only lookers on, and what

they see is not very interesting, but under the initiative and referendum the force behind meritorious but defeated legislation will have the right of appeal to the people upon petition, and the will of the people will be final, while those who stand in opposition to accomplished legislation of doubted wisdom will hold the power to appeal to the people for the exercise of a popular veto.

Will the initiative and referendum tend to destroy the independence of legislators?

In the first place a legislator is often a most dependent office seeker, and independence does not enter very largely into his character. He must have the support of others in order to accomplish anything at all. The political boss must be considered, the wishes of the presiding officer must be respected, when the party whip cracks the legislator must jump. Under the initiative and referendum the dependence of the legislator will be shifted from those factors to a greater dependence upon the wishes of his constituency. Instead of diminishing independence the initiative and referendum will cut loose the collar which nearly every legislator must suffer himself to wear now, and free him from the many entangling alliances in which he finds himself. The initiative and referendum will add to the character of legislators in many ways. If they had the innovation in Connecticut the blind boss in the sheriff's office would be without a vocation at the statehouse. When we have this innovation in Maine there will be no need of such a speech as Representative McKenney made when he said, on March 26, 1907, from the floor of the house of representatives:

When this legislature first opened I introduced three bills, one which made it necessary for the towns and cities to have swinging doors in front of their voting booths in order to have a secret ballot; another bill was a copy largely of the Massachusetts law with regard to balloting; another was with regard to the purity of elections. The reason why these bills were introduced was because I believed the people demanded a different ballot from the one we have. There is hardly a newspaper in Maine that has not advocated the adoption of the Massachusetts ballot.

These bills were referred to the judiciary committee, numbered 2, 4, and 5. It required a good deal of time and research to prepare those bills. A hearing was ordered on the bills. I went before the committee. A Republican from Portland asked permission to go before the committee and assist me at the hearing, and he did so. A gentleman sitting here, a Republican, also requested that he might be permitted to assist me in presenting those bills. There was no opposition to them. After the hearing several members of the committee, both Democrat and Republican, spoke to me favorably in regard to those bills. I ask them that I might have notice if they proposed to report adversely upon the bills, in order that I might have an opportunity to discuss them in this house. I constantly inquired of the members of the committee, not only of my own party but those of the other party, when they would be ready to report. They informed me that they had been referred to a subcommittee of three, and I had positive assurance from a member of the committee that when action was taken I should know it. After ten weeks of this session had gone by, one Friday night, when the Democratic member of the subcommittee was absent, the other two members of the subcommittee reported against the adoption of all those bills. On Saturday morning, when only 30 members were present, they came in here and the reports of that committee were adopted, went to the senate and were adopted, before we had any opportunity to know what action had been taken by the committee. I say those bills were important enough to have had a hearing before this house. I say that the people of the State of Maine, regardless of party, desire a different ballot from what we have. Thousands of votes are thrown away at every election because they are spoiled; thousands are never counted because they are defective. At the first of the session there was a contest in the senate, and they seated the Republican senator on a certain construction of the ballot law; in this house they reversed the action of the senate, because by reversing of the decision in the senate they seated the Republican member in this house; and we all know

that this has been the case since this ballot has been in existence, and that every committee has made rulings of their own, and that ruling has always been in favor of the majority.

I have very good evidence, I think, that the reason why these bills were kept so long in the hands of the committee, and why they were passed on Friday night when the Democratic member of the subcommittee was absent, and why they came into this house Saturday morning when only 30 members were present. It was because certain bosses of political parties in this State had issued their dictum that there should be no ballot laws passed at this session. I do not deny the committee the right to obey the dictates of those who rule in the State of Maine, but I stand here to say that the time will come in the State of Maine when the people will be heard and when the bosses of no political party will come to this house and dictate what legislation shall come before it or what legislation shall be passed by it. The people are getting pretty sore in regard to these matters. I felt that it was my duty to stand here before the adjournment of this legislature and let the members of this house, and not only the members of this house, but the voters of the State of Maine, understand that it is impossible for the minority party to come here with any law without its being made a political football and being kicked out of the house regardless of the will of the majority of the people.

Under the "big stick" of the initiative and referendum there would be no need for the delivery of any such sentiment as Senator Haselton, of Gardiner, uttered in a speech on the floor of the senate March 28, 1907, when, in speaking on the motion to reconsider the action of the senate whereby the bill entitled an act relating to the State liquor agency was passed to be engrossed, he said:

That would have been the condition if the enemies of this law had carried out their plan in the house, but at that time the three leading lobbyists of this opposition, all of them ex-State officials, presented themselves and changed the proposed tactics, one of them an ex-speaker of the house of representatives and another a county attorney of a neighboring county and the third an ex-county attorney of Kennebec, lobbied for what? Lobbied to prevent this proposed law from going through the senate, and what excuse did they give? What reason did they present why it should not be enacted? They did not appear before the committee. They did not appear before the members of the house and senate and present their arguments against this law, but by innuendo, with secret insinuations they approached the members of this legislature and, if it were possible, touch a member in a weak spot, if they could not reach his prejudices, they did so. And they have worked member by member along that line. I went to each of them—no, I did not. I want to correct that statement. I went to two of the parties composing that lobby to inquire for their objections to the measure. They have been working here for two weeks, and they are not charitable men who work for nothing. And the question may well be asked, who has put up this money for their work? Who furnished money for that work? I know it could not have been the State liquor commissioner, because in this law we protect every one of his rights. It must have been those men who are connected with the local agency and received their reward. Even they were not working for charity or the public welfare. Oh, no. They were reaching for your vote and working upon your prejudices, if you have any, to defeat this measure and save their personal benefits under the present system.

The measure referred to by Senator Heselton was defeated, even after it had been passed by both house and senate to be engrossed, the senate voting to refer the matter to the committee on salaries and fees and the house refusing to concur in that action. The initiative and referendum will check most effectually such practices as referred to by Representative McKinney and Senator Heselton. The opportunity to secure the passage of needed legislation, in spite of all trickery of politicians and lobbyists, will be increased, and the opportunity to slide through onto the statute books a mass of legislation of questionable wisdom will be correspondingly diminished, for who will deny that there was greater popular demand for the defeated legislation advocated by Representative McKinney and Senator Heselton than was

possessed by many of the 639 acts and 243 resolves which were passed by the same legislature and approved by the governor?

Our State structure, well designed by the forefathers in their wisdom and adequate for their times, now needs some improvement by the use of which the people themselves can secure legislation for the good of all. A condition favorable to the passage of 882 separate laws, of which 455 were private and special, at one session of the legislature, while much other legislation of importance was defeated by lobbying and political jobbery, shows a dangerous condition of affairs, far more menacing than could be contained in or result from the power of the people to finally act upon such legislation as seems necessary to a minority of 10,000 or 12,000 voters, even with the most liberal exercise of the power, which would be conferred by the initiative and referendum.

Wherever the initiative and referendum has been adopted the innovation has grown in popular favor. In Oregon the lobby, previously conspicuous and powerful at every session of the State legislature, has been eliminated, honest representation has been increased, proposed measures have been more carefully studied, and the responsibility of representatives and senators has been restored to its proper position in a government of, by, and for the people. Other States are falling into line, Oklahoma incorporating the initiative and referendum as a part of its original constitution. The people of Ohio will probably soon vote upon a similar constitutional amendment as is submitted to the voters of Maine. Agitations are working for the same object in many other States, and success seems assured.

Maine needs the initiative and referendum. To give moral effect in other States, and as an evidence of the wisdom of the people of Maine, the proposed amendment to the constitution, indicated upon the ballot in the following words: "Shall the constitution be amended as proposed by a resolution of the legislature providing for the establishment of a people's veto through the optional referendum and a direct initiative by petition and at general or special elections?" should be adopted by the largest majority ever given any question at the polls in the history of this good old State of Maine.

The will of the people is supreme; let it be vindicated in September.

STATE REFERENDUM LEAGUE OF MAINE,
By KINGSBURY B. PIPER, *Secretary.*

O

S. Doc. 521, 60-1——2

LIBRARY OF CONGRESS
0 012 050 538 5